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IN THE

Supreme Court of the United States

October Term, 1965
No. 583

CALIFORNIA DEMOCRATIC COUNCIL, *et al.*,

Appellants,

vs.

ROGER ARNEBERGH, *et al.*,

Appellees.

On Appeal From the District Court of Appeal of the State of California, Second Appellate District, Division One.

JURISDICTIONAL STATEMENT.

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Appellants,

vs.

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On Appeal From the District Court of Appeal of the State of California, Second Appellate District, Division One.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the District Court of Appeal of the State of California, Second Appellate District, Division One, entered on April 5, 1965, affirming a Judgment of the Superior Court of the State of California for the County of Los Angeles granting a Motion for Judgment on the Pleadings and denying an Injunction on the grounds that the State Statute here involved is constitutional and may be constitutionally applied to all of the Appellants. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that substantial questions are presented.

Opinion Below.

The opinion of the District Court of Appeal of the State of California, Second Appellate District, Division One, is reported in 233 A.C.A. 508, 43 Cal. Rptr. 531 (1965). A copy of the Opinion is appended hereto as Appendix A.

Jurisdiction.

This suit was brought in the Superior Court, a court of General Jurisdiction in the State of California, as an action for Declaratory Relief under which Appellants challenged the constitutionality of Sections 8600, 8601 (3) and (4), and 8603 through 8606, inclusive, of the Elections Code of the State of California. The Appellees moved for judgment on the pleadings and interposed a General Demurrer to the Amended Complaint. They thereby sought to sustain the validity of the challenged sections of the Elections Code. On April 1, 1964, the Superior Court of the State of California for the County of Los Angeles granted the Appellees' motion and specifically found that the Amended Complaint did sufficiently state facts upon which the Court could make a declaration as to the constitutionality of these fortunate sections of the Elections Code. Said Superior Court adjudged said Elections Code provisions constitutional and that they may be constitutionally applied to all of the Appellants. A copy of the judgment, dated April 9, 1965, is appended as Appendix B. The Judgment of the Superior Court was affirmed by the District Court of Appeal of the State of California Second Appellate District, Division One on April 5, 1964. A Petition for Rehearing was denied by the said District Court of Appeal on April 23, 1965. A

Petition for a Hearing by the Supreme Court of the State of California was denied on June 2, 1965.

Notice of Appeal to the Supreme Court of the United States was filed in the said District Court of Appeal on July 22, 1965. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court, to review the said final judgment: *Williams v. Bruffy*, 96 U.S. 176, 183 (1878); *Talley v. California*, 362 U.S. 60, 62; *Lovell v. City of Griffin, Ga.*, 303 U.S. 444 (1938); *Smith v. California*, 361 U.S. 147 (1960).

Question Presented.

Do Sections 8600, 8601(3) and (4), and 8603 through 8606, inclusive, of the California Elections Code which require volunteer political organizations to label their political literature on threat of criminal penalties or injunctive action violate the United States Constitution?

Appellants contend that they do because:

1. They establish a prior restraint on free speech, free press and free association in the operation of the electoral processes.

2. They do not prevent the evil which the authors claimed the law was drafted to curb.

3. They unconstitutionally discriminate against volunteer political workers and deprive them of equal protection of the laws.

4. They impose a heavy burden on persons participating in election campaigns.

5. They are vague and indefinite although they seek to punish violation as a felony.

6. Section 8605 is preempted by the provisions of the Federal Communications Act.

Statutes Involved.

Sections 8600, 8601 (3) and (4), and 8603 through 8606, inclusive of the Elections Code of the State of California, are appended hereto as Appendix C.

Statement of the Case.

1. *Nature of the Action and Relief Sought.* The Appellants are a non-profit California corporation which is a volunteer political organization of members of the Democratic Party, an individual registered Democrat appearing for himself and as representative of other registered Democrats affiliated with the California Democratic Council and other Democratic Clubs and Councils, a Democratic State Assemblyman, a Democratic State Senator, and a Democratic United States Congressman. [Tr. pp. 24, 33, 34, 35, 36.] By an Action for Declaratory Relief the Appellants challenged the constitutionality of Sections 8600, 8601(3) and (4), and 8603 through 8606, inclusive, of the Elections Code. [Tr. pp. 24-39.] The Appellees are the City of Los Angeles, County of Los Angeles, and State of California, and their chief law officers charged with the enforcement of those portions of the Elections Code. [Tr. pp. 24-25.] The Appellees moved for Judgment on the Pleadings and interposed a General Demurrer to the Amended Complaint to attack the sufficiency of the Amended Complaint to state a cause of action for declaratory relief as a matter of law, thereby seeking

to sustain the validity of the challenged Sections of the Elections Code. [Tr. pp. 40-43.]

The federal question was initially raised in the Complaint [Tr. pp. 1-15] and the Amended Complaint [Tr. pp. 24-39]. A detailed argument on the federal questions was presented to the Trial Court orally and by Appellants' Points and Authorities in opposition to Motion for Judgment on the Pleadings and General Demurrer [Tr. pp. 59-89].

2. *Summary of Material Facts.* The California Democratic Council is a non-profit California corporation which for over ten years has functioned as an organization, now composed of about 70,000 registered Democrats who in clubs, councils and conventions discuss issues facing the California voters and make pre-primary endorsements of candidates for nomination in the direct party primary of the Democratic Party. These endorsements are made when a broad consensus of the volunteer Democratic Party workers indicate their preference in open conventions on the state and local district levels. These conventions meet after proper notice and act through a representative group of the club members using due process in making their choice. [Tr. pp. 25-26.] These techniques obtain and publicize the viewpoint of a broadly based consensus of those who best know the individuals presenting themselves for nomination. This enables the members of the clubs affiliated with the California Democratic Council to carry out their civic functions as citizens of a democracy.

The pre-primary endorsements of the California Democratic Council are sought by Democratic candidates for nomination. [Tr. pp. 34, 35, 36.] After ob-

taining such pre-primary endorsements these endorsements are published and advertised in pamphlets, newspapers, handbills, on the radio and television and by other means of communication. The California Democratic Council publishes a "slate mailer" which consists of a postcard sent to all registered Democrats in the State of California and containing a list of those candidates for the nominations in the direct party primary who have the endorsement of the California Democratic Council. [Tr. p. 26.]

The 1963 State Legislature passed Assembly Bill 2922 which contained purported requirements that the advertisements, radio and television broadcasts, bills, pamphlets and postcards containing pre-primary endorsements also carry a notice to voters, stating that it is required by law, that the endorsement is by an unofficial party group, and that the official organizations of the Democratic Party are prohibited by law from endorsing candidates in primary elections. [Tr. pp. 26-27.] The legislation purports to establish the size of the notice to voters in type or lettering at least half as large as the type or lettering of the statement of endorsement or in 10-point roman type, whichever is larger, and requires it to be in a printed or drawn box set apart from any other printed matter. The notice must appear on each surface, page or fold of the document, or in the case of broadcast or telecast, read in full. A similar, but shorter notice is required on post cards, and it must be printed in 10-point boldface type on each surface bearing an endorsing statement.

In the event of a suspected violation of the statute, the Appellants might be subjected to the charge of committing a felony. Any attempt to print, publish or

distribute the political literature proscribed by the statute may subject them to a restraining order or injunction. [Tr. pp. 31-32.] The threat of such criminal or civil proceedings inhibits the appellants in the exercise of their political rights. [Tr. p. 32.]

The California Democratic Council has no desire to print such a notice on any of its material. [Tr. pp. 27-28.] The individual Appellants in the case do not desire to print such notices on any of their material which relates to their pre-primary endorsements. [Tr. pp. 34, 35, 36, 37.] They assert that the requirements of the law are invalid and seek a declaration that it violates both Federal and State Constitutions. [Tr. pp. 28-34.]

3. *Judgment of the Superior Court.* The Appellees' Motion for Judgment on the Pleadings was granted by the Honorable Trial Court on the grounds that the Amended Complaint did not state facts sufficient to constitute a cause of action for an injunction. The Court did find specifically that the Amended Complaint did sufficiently state facts upon which the Court could make a declaration as to the constitutionality of those sections of the Elections Code involved in the proceeding. [Tr. pp. 46-47.] Therefore, the Court adjudged Elections Code, Sections 8600, 8601(3) and (4), and 8603 through 8606 constitutional and may be constitutionally applied to all of the Appellants. [Tr. p. 47.] The Trial Court passed upon the federal questions in its Minute Order granting the Motion for Judgment on the Pleadings [Tr. p. 45] and in the Judgment itself. [Tr. pp. 46-47.]

Judgment was granted for the Appellees and against all of the Appellants.

On appeal the allegations of the Amended Complaint must be taken as true, and so taken the question is whether a cause of action has been stated.

> *Petermann v. International Brotherhood of Teamsters,* 174 Cal. App. 2d 184, 344 P. 2d 25 (1959).

4. *Ruling on Appeal.* Appellants raised the federal questions in detail with citation of authority in the Opening and Reply Briefs in the California District Court of Appeal, in the Petition for Rehearing in the District Court of Appeal and in the Petition for Hearing in the California Supreme Court. The federal questions were passed upon adversely to Appellants, sustaining the validity of the statutes involved, in the Opinion of the District Court of Appeal affirming the Judgment. The Petitions for Rehearing and for Hearing in the California Supreme Court were denied.

The Federal Questions Are Substantial.

The legislation at bar here has gone much farther than merely requiring identification. (*Cf. Talley v. California,* 362 U.S. 60 (1960).) It has singled out specific groups which are active in party primary campaigns. They act in a voluntary and unofficial capacity. The Legislature, seeking to isolate their particular form of endorsement from all other types of endorsements in the party primary, has required not only that they label themselves as unofficial but that they indicate the limitation of powers of official party groups in direct party

primaries. That requirement may not constitutionally be imposed by *ex parte* restraining orders and criminal sanctions upon those exercising their rights in the direct party primary. *Talley* left unanswered the areas in which some regulation might be permissible and the limitations on the scope of that regulation. The law of political campaigning needs to be further clarified. Important questions of law have arisen in this case and should be settled, because this case would go beyond the limitations imposed in *Talley*.

In addition, the line of cases, of which *New York Times v. Sullivan*, 376 U.S. 254 (1964) and *Garrison v. Louisiana*, 33 U.S. Law Week. 4019 (1964), are the most recent, indicate that the areas of free expression are broad. During the last term, the U.S. Supreme Court spoke again to limit summary restraint on free expression. *Freedman v. Maryland*, 33 U.S. Law Week. 4211 (1965).

This legislation effects a prior restraint by establishing in the legislation an alleged fact of doubt, confusion, or deceit, and, based upon that conclusion, making a legislative determination that anyone so acting should be restrained in disseminating political information. Because free speech in the vital electoral area is involved and because the statute would impose, not only injunctive but also criminal sanctions on those who seek to assert their rights, substantial federal questions of law are raised here.

I.

The Statute Is Unconstitutional by Requiring a Special Notice, Which Calls Attention to the Unofficial Character of the California Democratic Council and States That Official Party Organizations May Not Make Pre-Primary Endorsements, to Be Placed on or Read With All Advertising Material Containing Statements of Pre-Primary Endorsements and by Establishing a Prior Restraint on Free Speech, Free Press and Free Association in the Electoral Process, the Most Vital Channel of Communications in the Most Sensitive Area of Civil Liberty.

The California Democratic Council has encouraged a broad consensus in making pre-primary endorsements of candidates and direct action participation in legislative programs, thereby giving its members responsibilities in political affairs. This enables individual citizens to develop a political relation to the party leaders who exercise power over these citizens.

> "The freedom of the individual to participate in political activity is a fundamental principle of a democratic society and is the premise upon which our form of government is based. Our state Constitution declares, 'All political power is inherent in the people' (Const., Art. I, §2), and the First Amendment of the federal Constitution establishes the right of every citizen to engage in political expression and association."
>
> *Fort v. Civil Service Commission,* 61 Cal. 2d 331, 334-5, 392 P. 2d 385 (1964).

In order to bring the message to the electorate, volunteers undertake various activities which are the very

essence of the democratic structure of our Government. An infringement upon them becomes an infringement upon the basic freedom with which American citizens are endowed. The Supreme Court of the United States recognizes that

> "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association as this Court has more than once recognized in remarking upon the close nexus between freedoms of speech and assembly. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due-Process Clause of the Fourteenth Amendment, which embraces freedom of speech. . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."
>
> *National Association for the Advancement of Colored People v. Alabama,* 357 U.S. 449, 460 (1958).

The significance of the political activity generated by the California Democratic Council has been well expressed by Justice Stewart:

> "Like freedom of speech and free press, the right of peaceable assembly was considered by the Framers of our Constitution to lie at the foundation of a government based upon the consent of an informed citizenry—a government dedicated to the

> establishment of justice and the preservation of liberty. U.S. Constituion, Amend. 1. And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due-Process Clause of the Fourteenth Amendment from invasion by the States. . . . Freedoms such as these are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference."
>
> *Bates v. Little Rock,* 361 U.S. 516, 522-523 (1960).

The subtle pressures of governmental interference of these rights of free expression and free association are areas of civil liberties to which the highest Constitutional authority is now particularly sensitive. *Talley v. California,* 362 U.S. 60 (1960). *Speiser v. Randall,* 357 U.S. 513 (1958). (See particularly the concurring opinions of Justices Black and Douglas commencing at 357 U.S. 530.) *Louisiana v. National Association for the Advancement of Colored People,* 366 U.S. 293, 296 (1961).

The interference here is subtle. The California Democratic Council is a nationally known volunteer political organization. One of its principal functions is to make pre-primary endorsements. The full value of the pre-primary endorement is achieved by publishing to members of the California Democratic Council and the public at large the fact that a group of volunteer political workers have, in open convention, expressed their choice for a candidate for nomination in the party primary. No attempt is made to masquerade as the official party organization. As a matter of fact, great pride is taken

in the status of the California Democratic Council as a group of volunteers, unpaid party members not acting in any official capacity.

Elections Code, Sections 8603 through 8606 inhibit the manner of publishing the fact of the endorsement. If it is by printing on a placard, handbill or other advertisement, a notice to voters must be affixed. If it is by radio or television advertisement, the notice must be read in full. The notice is designed to increase the cost and interfere with the publicizing of pre-primary endorsements, to degrade the publication of the pre-primary endorsement by the California Democratic Council, and to inhibit the political activity of volunteers by casting doubt on whether they have complied with the law. The statute accomplishes these purposes by requiring that some act be a condition precedent to the exercise of free speech, free assembly, and free press or suffer either injunction or criminal law sanctions.

> "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative process. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience. Cf. Bowe v. Secretary of Commonwealth, 320 Mass. 230, 251, 252, 69 NE2d 115, 167 ALR 1447. It is not by accident, but by explicit design, as was said in Thomas v. Collins, supra (323 U.S. at 530, 89 L. ed 440, 65 S Ct 315), that these freedoms are coupled together in the First Amendment's assur-

ance. They involve the right to hear as well as to speak, and any restriction upon either attenuates both.

"There is therefore an effect in restricting expenditures for the publicizing of political views not inherently present in restricting other types of expenditure, namely, that it necessarily deprives the electorate, the persons entitled to hear, as well as the author of the utterance, whether an individual or a group, of the advantage of free and full discussion and of the right of free assembly for that purpose."

Mr. Justice Rutledge, dissenting in *United States v. C.I.O.*, 335 U.S. 106, at 143 (1948), joined by Justices Black, Douglas and Murphy.

Tested by the principles enunciated by Mr. Justice Rutledge and concurred in by Justices Black, Douglas and Murphy, which principles have been universally followed in recent cases before the U.S. and California Supreme Courts the legislation challenged here strikes at the very heart of the electoral process, publication by voters of their support and endorsement of candidates. This is where the electoral process requires the greatest freedom of expression so that the exercise of the right of free assembly may be meaningful in choosing the officers of government.

Recently the United States Supreme Court has taken occasion to strike down the civil libel law of a state which interfered with the expression of opinion in a paid advertisement seeking contributions and support in connection with the integration movement.

The New York Times Company v. Sullivan, 376 U.S. 254 (1964).

The issue here is analogous to the issues in *The New York Times* or in any of the recent cases involving the N.A.A.C.P. What Appellants are attempting to do is open up and broaden the area of debate and discussion on political issues. It is for the people in the forum of public debate to make the decisions. *The New York Times* recognized the fact that the material printed in the advertisement might have been false and probably was. But it involved the criticism of a public official, and although the comments might be untrue in fact or derogatory to the character of that official, unless there was actual malice, an official privilege exists against a threat of damage suits in order to prevent inhibiting the vigorous and effective administration of the policies of government by censorship, even self-censorship.

The U.S. Supreme Court there took pains to restate the general principles in the following language:

> "The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, 'was fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *Roth v. United States,* 354 U.S. 476, 484. 'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.' *Stromberg v. California* 283 U.S. 359, 369. [I]t is a prized American privilege to speak one's mind, although not al-

ways with perfect good taste, on all public institutions,' *Bridges v. California,* 314 U.S. 252, 270, and this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.' *N.A.A.C.P. v. Button,* 371 U.S. 415, 429. The First Amendment, said Judge Learned Hand, 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." *United States v. Associated Press,* 52 F. Supp. 362, 372 (D.C.S.D. N.Y. 1943). . . .

"That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive,' *N.A.A.C.P. v. Button,* 371 U.S. 415, 433, was also recognized by the Court of Appeals for the District of Columbia Circuit in *Sweeney v. Patterson,* 128 F. 2d 457, 458 (1942)."

The New York Times v. Sullivan, 376 U.S. at 270, 271-272 (1964).

Seen in this light the legislation in the Elections Code requiring a notice to voters really amounts to self-censorship. It forces the person publishing the facts of an endorsement or support to censor his material or suffer either civil or criminal sanctions. The fact that this self-censorship may be justified in the interest of preventing even an implication of a falsehood has also been answered by the United States Supreme Court in *The New York Times.*

"The state rule of law is not saved by its allowance of the defense of truth. A defense for erroneous statements honestly mde is no less essential here than was the requirement of proof of guility knowledge which, in *Smith v. California,* 361 U.S. 147, we held indispensable to a valid conviction of a bookseller for possessing obscene writings for sale. We said:

> 'For if the bookseller is criminally liable without knowledge of the contents . . . he will tend to restrict the books he sells to those he has inspected, and thus the State will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature . . . And the bookseller's burden would become the public's burden, for by restricting him the public's access to reading matter would be restricted . . . [H]is timidity in the face of his absolute criminal liability, thus would tend to restrict the public's access to the form of the printed word which the State could not constitutionally suppress directly. The bookseller's self censorship compelled by the State would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would be impeded.' (361 U.S. 147, 153-154).

"A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable 'self-censorship.' . . . Under such a rule, would-be

> critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone.' *Speiser v. Randall, supra,* 357 U.S., at 526. The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments."
>
> *The New York Times,* 376 U.S. at 278-279 (1964).

The Legislature here has sought to regulate far beyond the limitations the Courts have imposed. A. B. 2922 is no mere disclosure bill. It not only requires a statement purporting to describe volunteer political organization in negative terms, but the Notice also must summarize the limited power of *other* political organizations. This certainly is too great a price to pay constitutionally for truthfully and openly signing political tracts with the name of the political group which is disseminating it.

The restrictions on political advertising sought here are far broader, for example, than statutory restrictions on commercial advertising, which condemn untrue or misleading statements, although the Legislature attempted to draw an analogy to them. (Elections Code, Section 8601(4)).

Bus. & Prof. Code, Sec. 17500;

Civil Code, Sec. 3369.

The legislative finding employed the analogy to regulation on commercial advertising under the police power of the State or Federal government. However, it is clear that the powers which are available to the government in regulating commercial advertising are not available in connection with restrictions on free speech involving fundamental rights. This has been restated as recently as *New York Times v. Sullivan,* 376 U.S. 254, 266 (1964), where the question of free speech was considered and the rights upheld even though the "advertisement" in question was paid for, since it was not commercial advertising.

See:

Valentine v. Chrestensen, 316 U.S. 52, 54 (1941);

Murdock v. Pennsylvania, 319 U.S. 105, 108 (1942).

There is no doubt here that any advertisement regarding pre-primary endorsements would not constitute commercial advertising. The analogy to cases involving commercial advertising states an inapplicable rule. The reasons that no cases could be found of a nature similar to this type of situation, as the Court below recognized, are that constitutionally such action would be barred and that this is the first attempt to restrict pre-primary endorsements by volunteers which constitute a new trend in politics originating in the State of California.

Both State and Federal Supreme Courts have held unconstitutional a penal statute which "sweeps within other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself

to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective, or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship."

In re Blaney, 30 Cal. 2d 643, 653, 184 P. 2d 892 (1947);

Thornhill v. Alabama, 310 U.S. 88, 96 (1940)

Tested by these principles, the restraints imposed by the Elections Code provisions challenged here should be held to be unconstitutional.

II.

Elections Code, Sections 8603-8606 Violate the Due Process of Law Clauses of the Federal Constitution in That They Do Not Prevent the Evil Which Their Authors Claim That They Were Drafted to Curb.

It is contended that the matter troubling the Legislature was public doubt and confusion as to whether preprimary endorsements are those of a private group of citizens or of an official governing body of a political party. Elections Code, Section 8601(3). That evil is the one which must be considered here. Elections Code, Section 8602 not challenged here, tends to solution if a problem exists. It specifically prevents any candidate or any person on his behalf from claiming that he is the official candidate or the official endorsed candidate of that political party. If necessary, the Legislature might even require that no organization may claim that it is

one of the official governing bodies of a party qualified to participate in the direct primary election. If the evil which is troubling the Legislature is deception, it may be reached by easily drafted legislation: Forbid the intentional fraud of stating that a group is the official party.

At no time have the Appellees nor anyone else argued, nor can they, that the Legislature held any hearings or found any basis to support the legislative finding that there was doubt or confusion created by pre-primary endorsements by unofficial organizations using as part of their names the name of a political party. See Elections Code, Sec. 8601(3). As a matter of fact, the undisputed facts in the case are that the California Democratic Council and the other Appellants have taken pride in the fact that they are a volunteer political group and do not masquerade as official party organizations. Even more significant, there is no support at all, either in any legislative history or even in any legislative findings, for asserting in the Elections Code, Section 8601-(4) that the public should be protected from deception by reason of the publication of pre-primary endorsements.

The purported legislative findings as to doubt or confusion do not support a remedy against fraud, deceit, or falsehood in connection with the publicizing of pre-primary endorsements. All the facts in the case are to the contrary.

A regulation of conduct which incidentally affects the communication of ideas must serve a substantial public interest and be narrowly drawn to keep interference with communication to a minimum. It must be "highly selective" in order to survive First Amendment

challenge. (*Louisiana ex rel. Gremillion v. N.A.A.C.P.*, [366 U.S. 293, 296 [81 S. Ct. 1333, 6 L. Ed. 2d 301, 304].) "The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." (*Shelton v. Tucker, supra*, 346 U.S. at p. 488 [5 L. Ed. 2d at p. 237].) In the protection of constitutional freedoms it is the duty of the court to determine whether the action bears a reasonable relation to the achievement of the governmental purpose asserted as its justification. (*Bates v. City of Little Rock, supra*, 361 U.S. at p. 525 [4 L. Ed. 2d at p. 487].)

In *Talley v. California*, 362 U.S. 60 (1963), the Court invalidated a city ordinance which broadly prohibited distribution of handbills not disclosing the name and address of the sponsor. The Court stated: "There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression." (362 U.S. at p. 64 [4 L. Ed. 2d at p. 563].) The prohibition against anonymity was subject to the infirmity that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance." (362 U.S. at p. 65 [4 L. Ed. 2d at p. 563].) A claim that the ordinance would require identification of those responsible for fraud, false advertising and libel was met with the rejoinder that the ordinance was not so limited. "Therefore," said the court, "we do not pass on the validity of an ordinance limited to prevent these or any other supposed evils." (362 U.S. at p. 64 [4 L. Ed. 2d at p. 562].) Accordingly, the ordinance was nullified as an abridgement of free speech and free press.

There may be a basis for legislative concern about "false, misleading or irresponsible literature" or even

of "smear sheets" circulated anonymously. See *Canon v. The Justice Court,* 61 Cal. 2d 446, 393 P. 2d 428 (1964). But no "public doubt or confusion" about pre-primary endorsements by bona fide volunteer political groups has ever come within the area of legislative investigation. The legislative history of A. B. 2922, the statute at bar here, shows, quite the contrary.

Here is a striking example of a penal statute that "does not aim specifically at evils within the allowable area of state control."

In re Blaney, supra;
Thornhill v. Alabama, supra.

A. B. 2922 inhibits the expression of political opinion. Since that portion of the legislation under attack here does not bear a reasonable relationship to the evil sought to be curbed, it violates the requirements of due process of law.

III.

The Requirements of the Notices to Voters in Elections Code, Sections 8603 Through 8605, Inclusive, Impose a Heavy Unconstitutional Burden on Persons Seeking to Publicize Pre-Primary Endorsement Information in Election Campaigns.

From a constitutional point of view, the inhibition of the civil libel judgment in *The New York Times, supra,* is no more restrictive than the requirements of the notices to voters promulgated in Elections Code, Sections 8603 through 8605.

Talley v. California, supra, stands for more than voiding an ordinance which establishes a disclosure requirement for all hand bills. The language and the

logic carry greater meaning. The Court noted the importance of an anonymity which enable persecuted groups and sects to criticize oppressive practices in laws without an obnoxious press licensing law or other requirements which lessen the circulation of literature. Most recently members of groups under attack have resorted to anonymous free expression to avoid pressure. See *Bates v. Little Rock, supra; National Association for the Advancement of Colored People v. Alabama, supra.* These cases teach that burdens which inhibit publication or create pressures or threats against persons who would publish, violate First Amendment freedoms of expression. The requirement of the Notice to Voters in the legislation here with its criminal sanctions for violation is an inhibiting pressure.

The practical burden of the Notice on publication is even more striking. It is commonly known that radio and television political advertising during a campaign year consists primarily of the use of ten or twenty-second radio or television spots. The Court may itself ascertain that the reading of the Notice takes from seven to nine seconds depending on the manner of speaking. The requirement prevents the use of the ten second spot, and effectively destroys the utility of the twenty-second spot.

On handbills and billboards the size of the Notice required will make endorsements by volunteer groups substantially more unusable and ineffective. If the law is interpreted to mean that the Notice to Voters must be not less than half the size of the endorsement statement, the entire Notice to Voters may well be larger than the endorsement itself since the number of words required for the notice is far greater than the simple

statement usually used in political advertisements referring to political endorsement or support.

The form of sanctions also impose an unconstitutional burden. A violation of some sections of the law constitutes a felony. Elections Code, Sections 29,000 and 29,001. A volunteer may commit a crime by distributing a political tract. It is a hardy soul who will pay that price to participate in volunteer political activity. A violation of the 8603, 8604 and 8605 does *not* require scienter. A strict or absolute criminal liability is imposed. Legislation which holds distribution of information criminal and dispensing with the requirement of scienter is unconstitutional.

Smith v. California, 361 U.S. 147 (1959).

This legislation also inhibits free expression through civil judgment in injunction proceedings. Elections Code, Section 8606. The safeguards of the criminal law in requiring an indictment and proof beyond reasonable doubt are not available. As in *The New York Times, supra,* the civil sanction may be substantially more effective. The injunction may be sought at that crucial moment after a large amount of money has been paid and the printing is published and ready to be distributed or just before the billboards are posted. Then the injunctive proceeding is initiated. During the last week or two of a political campaign the most urgent demand exists for opportunities for broad public expression. Parties attempting to publicize the fact of support or endorsement will be inhibited by injunction proceedings which after the election may turn out to be unfounded. No award of damages can compensate for the loss of the election. No clear and present danger justifies

such repression. *The New York Times v. Sullivan, supra.*

This legislation provides for application of temporary restraining orders and injunctive proceedings. Elections Code, Section 8606. Temporary restraining orders may be obtained *ex parte* and without any opportunity for the person who seeks to disseminate the fact of pre-primary endorsement to oppose the granting of the temporary restraining order. Code of Civil Procedure, Section 527. This may be done during the last crucial days of a campaign at which time, the matter of dissemination of information in a timely manner becomes of vital concern. By this sanction, the legislation allows a restraint without a hearing upon free expression in the electoral area. Furthermore, the legislation carries the presumption that the dissemination of the information without complying with all of the requirements of the legislation by certain volunteer political workers is deceitful or confusing. None of these facts must be established judicially in order to effect the restraint.

Cf. A Quantity of Copies of Books v. Kansas, 378 U.S. 205 (1964).

Although the Legislature may choose the types of sanctions, it wishes to impose, in this area the sanctions must afford to persons exercising their right of free speech, all the opportunities of procedural and substantive due process.

Marcus v. Search Warrant of Property, 367 U.S. 717 (1961);

Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).

This legislation does not do so. It does not even attempt to provide the safeguards which the U.S. Su-

preme Court in *Kingsley Books, Inc. v. Brown,* 354 U.S. 436 (1957),

> "tolerated . . . only where it operated under judicial superintendence and assured an almost immediate judicial determination of the validity of the restraint."
>
> *Bantam Books, Inc. v. Sullivan, supra,* 372 U.S. at 70.

A statute which is broadly and loosely drawn and which places it within the power of a court to grant injunctive relief which by its terms may be used to strike down the right to freedom of speech, is a prior restraint upon that right and falls squarely within the rule invalidating sweeping legislative restrictions on free expression.

> *In re Blaney,* 30 Cal. 2d 643, at 651, 184 P. 2d 892 (1947).

Numerous attempts were made to enjoin political literature in the 1964 California Direct Party Primary under color of the statute involved here. Not only were temporary restraining orders issued in these cases, but, in several, preliminary injunctions were decreed. Nevertheless, the statute should be tested on its face.

> "Proof of the abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas. (Citations.) The cases when interpreted in light of their facts indicate that the rule is not based upon any assumption that application for the license would be refused or would result in the imposition of other unlawful regulations. Rather it derives from an

appreciation of the character of the evil inherent in a licensing system. The power of the licensor against which John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing' is pernicious not merely by reason of the censure of particular comments but by reason of the threat to censure comments on matters of public concern. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion. (Citation.) One who might have had a license for the asking may therefore call into question the whole scheme of licensing when he is prosecuted for failure to procure it." (Citations.)

Thornhill v. Alabama, 310 U.S. 88, 96 (1940);

In re Blaney, 30 Cal. 2d 643, 652, 184 P. 2d 892 (1947);

Fort v. Civil Service Commission, 61 Cal. 2d 331, 392 P. 2d 385 (1964).

The legislature also created an unconstitutional burden by establishing a legislative presumption in Section 8601 that some type of publication has confused or created public doubt in the minds of the citizenry and stating that the voting public is entitled to protection from deception in political campaigns in the same manner and for the same reasons that it is entitled to protection from deception by advertisers of commercial products. Yet we have seen not only that the advertising of commercial products carries an entirely different and less burdensome requirement but also that there is a sharp constitutional difference between commercial advertising and political opinions.

Moreover, the legislature may not declare by some type of finding that a person is guilty and thrust upon that person the burden of proving his innocence. It is not within the province of the legislature to declare an individual guilty or presumptively guilty of a crime, See *Speiser v. Randall,* 357 U.S. 513, at pages 523-524 (1958). This is particularly true where free expression is involved and where the complexity of the proofs and the generality of the standards provide but shifting sands on which the litigant must maintain his position. As the Court said in *Speiser v. Randall, supra,* 357 U.S. 513, at page 526, "In practical operation, therefore, this procedural device must necessarily produce a result which the State could not command directly. It can only result in a deterrence of speech which the Constitution makes free. It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."

IV.

Elections Code, Sections 8603 Through 8606, Unconstitutionally Deprive Volunteer Political Groups of Equal Protection of the Law and Due Process of Law by Establishing an Arbitrary Classification.

This legislation strikes hardest at those organizations which are most vitally interested in making pre-primary endorsements and taking an active part in political campaigns through expressing their preference for candidates for public office and working to publish the fact of that support. The legislation ignores com-

pletely those who publicize their opposition to candidates.

Both the California Democratic Council and the California Republican Assembly are statewide organizations composed of local clubs and councils which make pre-primary endorsements. Other organizations make endorsements as well, and their voices may sometimes be even louder. Organized labor, special interest groups, veterans groups, and even political parties who are not qualified on the ballot endorse or support candidates. Individuals who call themselves either Democrats or Republicans are completely free under the law to identify themselves as such, using the name of Democrat or Republican, and to publicize their endorsement or support in the press, on billboards, handbills, or over radio and television. Other individuals who are well recognized political leaders of the official parties are permitted to make endorsements using their official party titles. There is no requirement or limitation imposed upon their endorsement by a notice of any kind that they speak only as private citizens and not in their official capacities. If there is a danger that the public will be confused as to endorsements, it would appear to be in this area. But instead the Legislature has singled out volunteer political groups for regulation.

The law enacts discrimination which is not constitutionally protected. It creates a special class of citizens to impose a regulation on free expression. If the group uses their individual names and describes themselves as Democrats or Republicans, they escape the force of the statute. But if they use a collective name they must abide by the legislative infringement on their freedom. Specific group action thereby suffers unconstitutional discrimination.

Most recently, in the area of political literature, the California Supreme Court struck down, as unconstitutional, legislation which arbitrarily classified only a portion of the community. The validity of classification must appear clearly when a fundamental right is involved. *Canon v. The Justice Court, supra.*

V.

Elections Code, Sections 8603 Through 8605 Are Unconstitutionally Vague and Indefinite, Thereby Denying Plaintiffs Due Process of Law.

The statute is replete with ambiguity and vagueness.

> "Where a provision restricting free speech and the free dissemination of ideas is involved, a court in considering the claim of overbreadth and vagueness may take into account the operation of the provision as to factual situations other than the one at bar."
>
> *Fort v. Civil Service Commission,* 61 Cal 2d 331, 339, 392 P. 2d 385 (1964).

A. B. 2922 applies to endorsements of a "political party organization" or "organizations using as a part of their name the name of a political party or a derivative thereof." None of these terms is defined in A. B. 2922. Does any use of the name Democratic or Republican or the initials "D" or "R" constitute a "derivative"? Does the California Democratic Council use the name of the party? Does it do so when described as the "C. D. C."? What about "Democrats for Brown"? Since the law refers to matter "having reference to endorsement" does it encompass statements by opponents that a candidate is endorsed by one of the organizations involved?

The size of the disclaimer is ambiguous. Does the law require an endorsement of Governor Brown on a billboard which carries his name in six foot letters to have the disclaimer in a box with letters three feet high? What statements or words are referred to? Are just the words, "endorsed" or "supported by" or are the candidates' names and offices included? What is the rule in the following case:

California Democratic Council	(1 foot high)
endorses	(1 foot high)
Brown	(2 feet high)
For	(8 inches high)
Governor	(3 feet high)

What size type should carry the Notice? The statute give no guidance.

The bill purports to exclude certain newspapers or magazines. But if carefully read, it applies only to those which in the ordinary course of business publish *political* news items, comments or articles. Does it exempt the Democratic Digest, published by the Democratic State Central Committee, and the C. D. C. Bulletin? Nation Magazine is probably exempt. But is Sunset exempt if it publishes a story about a C. D. C. endorsed candidate supporting conservation? What about corporate or union house organs?

The provision on postcards (Section 8604) introduces the word "committee" not otherwise used or defined. Whom do they constitute? The law refers vaguely to statements or words in Section 8603. It states that Section 8604 shall not apply to any matter which bears the word "official" followed by the name of the party or derivative thereof or the words "officially endorsed",

or to any matter violating Section 8602. Does this mean that a postcard saying "Official C. D. C. Endorsement" does not have to carry any qualifying phrase or that it must carry the entire notice? Are there any penalties imposed for payment of material violating Section 8604?

Must there be a box disclaimer for each endorsement by each separate political party organization or only one for all of them? How then describe which are the ones to which it applies, since the disclaimer is specifically and inflexibly worded?

It is well established that the conduct proscribed which works to limit freedoms of expression must be defined specifically so that the person or persons affected remain secure and unrestricted in their rights to engage in activities not encompassed by the legislation. *Cantwell v. Connecticut,* 310 U.S. 296 (1952).

> The United States Supreme Court has only recently reiterated that . . . "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law . . . No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed of what the State commands or forbids . . . Words which are vague and fluid . . . may be as much a trap for the innocent as the ancient laws of Caligula . . . Stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril

here, because the free dissemination of ideas may be the loser . . . The maintenance of the opportunity for free political discussion to the end that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment.

Cramp v. Board of Public Instruction, 368 U.S. 278, 286 (1961).

See also,

In re Blancy, supra.

VI.

Elections Code, Section 8605 Requires the Publication of a Notice to Voters by Radio or Television and Unconstitutionally Invades a Field Preempted by the Federal Government.

The Federal Communication Act clearly provides that the Federal Communication Commission has no power to censor radio communications nor can it create any regulation or condition which would interfere with the right of free speech by radio communications.

47 U.S.C., Sec. 326.

Furthermore, in the area of political expression the Communications Act specifically provides equal time provisions for candidates and prevents any station from censoring such material.

47 U. S. C., Sec. 315.

It is clear that Section 326 declaring national policy has occupied fully the field of program control, and that field is no longer open to the States.

Allen B. Dumont Laboratories v. Carroll, 184 F. 2d 153, 156 (C. A. 3, 1950), *cert. den.* 340 U.S. 929.

The citation by the Honorable Court below of *Head v. Board of Examiners,* 374 U.S. 424 (1963), should not be authority for the decision here since it involved regulation by a State of commercial advertising. However, it is clear that where the matters do not involve commercial advertising, but political information, no one, including the Federal Communication Commission, has the power to censor or regulate what appears on television or is said on radio. By establishing in 47 U.S.C. 315, that limited area in which political expression is to be regulated, the Federal law excludes any other regulation of political broadcasts. In *Head,* no comparable provision to regulate commercial advertising existed to show Congressional concern.

Therefore, where, as here, the regulation of political broadcasting as well as broadcasting generally was undertaken by the Federal Government, the states have no right to interfere.

See also:

Farmers Educational and Cooperative Union of America v. WDAY, 360 U.S. 525, 535, fn. 19 (1959).

Because of the supremacy clause of the United States Constitution it is clear that Section 8605 invalidly invades an area pre-empted by the Federal Government.

United States Constitution, Art. VI.

Conclusion.

The Appellants respectfully submit that this Honorable Supreme Court should take jurisdiction herein in order to consider the claim for constitutional protection of the rights of vounteer political workers, since the questions presented by this appeal are substantial and of paramount public importance.

Respectfully submitted,

LEON M. COOPER,
Attorney for Appellants.

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APPENDIX A.

Opinion of the District Court of Appeal.

In the District Court of Appeal of the State of California, Second Appellate District, Division One.

California Democratic Council, etc. et al., Plaintiffs and Appellants, vs. Roger Arnebergh, et al., Defendants and Respondents. Civil No. 28396.

Filed, April 5, 1965.

Appeal from a judgment of the Superior Court of Los Angeles County. Shirley M. Hufstedler, Judge.

Leon M. Cooper for Appellants.

Thomas C. Lynch, Attorney General, Charles A. Barrett, Assistant Attorney General, Sanford N. Gruskin, Deputy Attorney General, Harold W. Kennedy, County Counsel, Edward H. Gaylord, Assistant County Counsel, Roger Arnebergh, City Attorney, Bourke Jones, Assistant City Attorney and Claude E. Hilker, Assistant City Attorney, for Respondents.

By this action for declaratory relief and an injunction, plaintiffs have challenged the constitutionality of certain legislation enacted in 1963 and known as the "Truth in Endorsements Law." Elec. Code, § 8600, et seq.) Specifically exempted from the above challenge are section 8601, subdivisions 1 and 2, and section 8602. Defendants had judgment on the pleadings; in addition to denying an injunction, the judgment declared that section 8600, section 8601, subdivisions 3 and 4, and sections 8603 through 8606 of the Elections Code are constitutional and may be constitutionally applied to all of the plaintiffs.

The legislation provides, in brief, that every advertisement which (1) makes reference to any candidate

for nomination for partisan office in a direct primary and (2) contains a statement to the effect that the candidate has been endorsed by an organization using as a part of its name the name of a political party, shall (3) bear a notice that the organization is an unofficial political group.[1] California Democratic Council is concededly a group of volunteer, unpaid party members not acting in an official party capacity; the individual plaintiffs are either members of the above organization or intend to seek its pre-primary endorsement for public office. It is alleged that neither the individual plaintiffs, nor plaintiff California Democratic Council, desire to print material relating to their pre-primary endorsements on the form of notice prescribed by one of the subject statutes, namely, that it be in type or lettering at least half as large as the type or lettering of the statement and set apart from any other printed matter in a drawn or printed box. It is further alleged that any attempt to print or distribute literature in violation thereof subjects plaintiffs to restraint by injunction and the possible application of penal sanctions, thus inhibiting them in the exercise of their political rights.

Plaintiffs first assert that the legislative measures in question infringe on freedom of speech and of the press as guaranteed by the federal and state Constitutions—this, in addition to the restraint said to be imposed on their right of free association in the electoral process, citing *Fort v. Civil Service Commission,* 61 Cal. 2d 331, 334-335. We find this contention untenable. While

[1]If the advertisement is intended for broadcast or telecast by radio or television, the notice shall be read in full instead of printed.

our state Constitution declares that "All political power is inherent in the people" (Cal. Const., art. I, § 2), we are here concerned with laws enacted pursuant to a constitutional amendment which expressly empowers the Legislature to establish tests governing the right of political parties to participate in primary elections. (Cal. Const., art. II, § 2½.) The broad regulatory power thus given includes authority "to determine the tests and conditions upon which electors, political parties, or organizations of electors may participate in any such election." Almost 50 years ago, in *Heney v. Jordan,* 179 Cal. 24, 27-28, the court declared that "the question as to what provisions are essential to attain the objects contemplated by section 2½, article II, of the constitution, is one peculiarly within the domain of the legislative department, which is practically given plenary power in the matter, that the presumption is in favor of the validity of any provision made, and that if there is any theory upon which the provision might reasonably have been concluded by the legislature to be essential, the courts may not interfere."

It may not fairly be argued that the statutes under attack do not serve to attain the legitimate objective of requiring, as was stated in *Heney, supra,* that "all party nominations to be made directly by the members of the party at a primary election." (p. 31.) Such nominations cannot intelligently be forthcoming when there is doubt and confusion as to whether pre-primary endorsements are those of an official governing body of a political party or otherwise. Indeed, section 8602 of the Elections Code (specifically exempted from challenge) prohibits even official government bodies of political parties, formally listed in the statute, from en-

dorsing any candidate for partisan office in the direct primary. In this connection, the Legislature went to the lengths of adopting certain findings (Elec. Code, § 8601); subdivision 3 thereof finds that "Over the several years preceding the adoption of this section organizations of electors using as a part of their names the name of a political party qualified to participate in the direct primary election have endorsed candidates for nomination of that party . . . and have publicized and promulgated such endorsements in a manner which has resulted in considerable public doubt and confusion as to whether such endorsements are those of a private group of citizens or of an official governing body of a political party." Not only must we assume that the Legislature has realistically and by reasonable means attempted to remedy, in the public interest, a situation which it found to be particularly prevalent (*Lelande v. Lowery,* 26 Cal. 2d 224, 234), but we are faced with the "conclusive presumption" that "the governor and the legislature have performed their duty, and ascertained the existence of the fact before enacting or approving the law . . ." (*Smith v. Mathews,* 155 Cal 752, 756.)

There is also a finding by the Legislature (§ 8601, subd. 4) that "The voting public is entitled to protection by law from deception in political campaigns in the same manner and for the same reasons that it is entitled to protection from deception by advertisers of commercial products." Over the years, of course, there has been considerable decisional law supporting the police power of legislative bodies to prohibit deceptive or misleading statements as they pertain to commercial advertising. See *Serve Yourself Gas etc. Assn. v Brock,* 39 Cal. 2d 813, and cases there cited. Even if literally

true, the statements may be actually misleading and subject to regulation. *(Donaldson v. Read Magazine,* 333 U.S. 178 [68 S. Ct. 591, 92 L. Ed. 628]). Too, misleading statements may be prohibited even if published without any fraudulent intent. *(Dodge Stationery Co. v. Dodge,* 145 Cal. 380.) While cited by the parties to no statute or decision directly in point, we are not persuaded (as appellants urge us to hold) that the above analogy by the Legislature is an unreasonable one. True, "votes are not oleomargarine," but the analogy bears a reasonable relationship to the objectives to be attained by the legislation in question.

But, say appellants, under the guise of preventing the dissemination of misleading literature the present legislation constitutes a form of "self-censorship." They cite *New York Times Co. v. Sullivan,* 376 U.S. 254 [84 S. Ct. 710, 11 L. Ed. 2d 686], which uses the terminology just quoted, for the claim that such censorship is to be avoided because "it dampens the vigor and limits the variety of public debate." The cited decision is also relied on by the appellants for the contention that sections 8603-8606 cannot "be justified in the interest of preventing even an implication of falsehood." The *Times* case, however, which struck down an Alabama libel statute is distinguishable from our case. In the first place, it was concerned with the contents of a publication, not the identity or status of the author. A second distinction is pointed out in *Canon v. Justice Court,* 61 Cal. 2d 446, where the court was confronted with another disclosure, namely, section 12047 of the Elections Code.[2] After according recog-

[2]Section 12047, briefly, makes it a misdemeanor for any person to write or distribute any material designed to injure or defeat

nition to the consideration noted in the *Times* case, *supra*, that it is "of the utmost consequence that the people should discuss the character and qualifications of candidates for their suffrages," the court declared: "There is a crucial difference, however, between the interests at stake in a libel case and those involved in the enforcement of a purity of elections statute. In the former, we juxtapose against free speech the risk of harm to the reputation of an individual. . . . However, the disclosure requirement of section 12047 does far more than protect the reputation of candidates. It furthers the very ends sought to be achieved through the right of free speech, to wit, "that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. [Citations.] This end is attained when the will of the people is an undeceived, well-informed will." (p. 458). The statute was held to pass "the freedom of speech barricade." (p. 460.)

Finally, with respect to the guarantees of free speech and of the press, it should be emphasized that the sections do not curtail the right to endorse any candidate; they merely require that the use of the name of a political party not mislead the voters. In other words, the use of the political party's name is not prohibited, but only the use of that name in a manner that might tend to create a misimpression, albeit wholly unintended. These requirements do not violate the right of free speech. To the contrary, they serve a legitimate gov-

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any candidate for public office unless such material discloses in a conspicuous place thereon the name and address of the officers of the organization so issuing the material, or the name and address of "some voter of this State," if any, who is responsible for it. Solely on the ground that it applied only to voters and thus resulted in an arbitrary classification, the statute was held invalid.

ernmental interest and thus distinguish the present proceeding from such cases as *National Asso. For The A. C. P. v. Alabama,* 357 U.S. 449 [78 S. Ct. 1163, 2 L. Ed. 2d 1388] and *Bates v. Little Rock,* 361 U.S. 516 [80 S. Ct. 412, 4 L. Ed. 2d 480], relied on by appellants; as pointed out in *Canon v. Justice Court, supra,* 61 Cal. 2d 446, 455, "in those cases 'there was no showing of any danger inherent in concealment, no showing that the State, in seeking disclosure, was attempting to cope with any perceived danger.'"

It is also urged that sections 8603-8606 are violative of due process in that they do not prevent the evil which the Legislature by their enactment sought to curb. Appellants assert: ". . . If the evil which is troubling the legislature is deception, it may be reached by easily drafted legislation: Forbid the intentional fraud of stating that a group is the official party." They further assert that "no 'public doubt or confusion' about pre-primary endorsements by bona fide volunteer groups has ever come within the area of legislative investigation." The simple answer to the above claim and assertions is that the Legislature has expressly determined that statements of the kind prescribed do in fact tend to confuse the voting public. (§ 8601, subd. 3.) We must conclusively presume that the executive and legislative branches "have performed their duty, and ascertained the existence of the fact before enacting or approving the law. . . ." (*Smith v. Mathews, supra,* 155 Cal. 752, 756.)

Next, it is contended that the notice requirements found in the challenged sections impose a heavy unconstitutional burden on persons seeking to publicize pre-primary endorsements. Pointing out that the legis-

lation authorizes the use of an injunction, appellants complain that such preventive proceedings may be initiated after a large amount of money has been spent, the printed matter is ready for distribution, or just before the billboards are posted. The legislation, appellants also contend, creates a presumption of guilt by the finding that a certain type of publication has confused the voting public. Lastly, and cases said to support the claim are cited, it is argued that burdens which inhibit publication or create pressures (such as criminal sanctions) against persons so publishing violate the First Amendment. It is settled, however, that the constitutionality of a statute depends upon whether the benefit to the public outweighs the burden on the individual. Said the court in *Canon v. Justice Court, supra,* 61 Cal. 2d 446, 456: "The crucial question, then, is whether the end to be achieved by the disclosure requirement justifies the resulting impairment of freedom of expression. Certainly, not every infringement upon freedom of speech, of whatever degree and without regard to any countervailing interest, is constitutionally forbidden." The Legislature has determined the danger inherent in the proscribed form of endorsement; we cannot say that it does not outweigh what the realities tell us would be a minor economic burden. Nor does the power to resort to the injunctive remedy make the legislation unconstitutionally burdensome. The manner in which the several prohibitions are enforced is peculiarly within the discretion of the Legislature. (*Kingsley Books v. Brown,* 354 U.S. 436 [77 S. Ct. 1325, 1 L. Ed. 2d 1469].) The same case is also authority for the rule that it is a matter within the legislative body's range of choice whether enforcement be had by

a criminal prosecution or by an injunction or by both of these remedies. Finally, contrary to appellants' suggestion, section 8601 creates no presumption of guilt. A legislative finding that some type of publication creates confusion or doubt in the minds of voters does not establish a presumption that a certain person or organization has printed or distributed such material.

It is also asserted that the legislation arbitrarily discriminates against a special class of citizens. Specifically, if the group of citizens uses their individual names, describing themselves as Democrats or Republicans, they escape the force of the statute; if, however, they use a collective name, they must comply with the challenged legislation. Too, the legislation is not applicable to organizations which do not have the name of a political party, such as organized labor groups and veterans organizations. As for the first of the above claims, section 8602 (which is not challenged) prohibits deception by an express statement and applies to all individuals or organizations: ". . . . No candidate for such nomination shall claim, nor *shall any other person claim on his behalf,* that he is the official candidate or the officially endorsed candidate of that party." (Emphasis added.) With regard to the second of the two arguments, the requirement that a misleading impression be corrected (as provided by sections 8603-8606) is applicable to all those organizations whose names mislead by the inclusion therein of a political party's name or a derivative thereof.[3] Further dispositive of the point is the failure of appellants "to rec-

[3]For purposes of illustration, respondents point out, "An endorsement by the Richard Roe Club . . . would not tend to imply that either the endorsement or the club was official. . . ."